

**ANNUAL REPORT  
OF THE  
PROBATE CODE STUDY COMMISSION**



**Indiana Legislative Services Agency  
200 W. Washington Street, Suite 301  
Indianapolis, Indiana 46204**

**October, 2005**

# INDIANA LEGISLATIVE COUNCIL

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# **PROBATE CODE STUDY COMMISSION**

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### **Staff**

**James Landers**  
**Fiscal Analyst for the Commission**

**Ross Hooten**  
**Attorney for the Commission**

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.

## **I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES**

In 1988, the Indiana General Assembly enacted IC 2-5-16-12 directing the Commission to do the following:

"...study and recommend to the General Assembly needed changes in the following:

- (1) The probate code (IC 29-1).
- (2) The trust code (IC 30-4).
- (3) Other statutes affecting the administration of a decedent's estate, guardianships, probate jurisdiction, trusts, or fiduciaries."

For the 2005 interim, the Legislative Council assigned to the Commission the additional responsibility of studying living wills.

## **II. INTRODUCTION AND REASONS FOR STUDY**

In addition to the charge to the Commission found in IC 2-5-16-12 and the charge to study living wills set forth in Legislative Council Resolution 05-01, the Commission studied issues referred to the Commission by the Probate, Trust, and Real Property Section of the Indiana State Bar Association.

## **III. SUMMARY OF WORK PROGRAM**

The Commission met on the following dates at the State House in Indianapolis:

August 31, 2005  
September 21, 2005  
October 6, 2005

Meeting minutes for the Commission can be accessed from the General Assembly Homepage at <http://www.ai.org/legislative/>.

## **IV. SUMMARY OF TESTIMONY**

The Commission heard testimony on the status of the Indiana estate tax (IC 6-4.1-11) in the aftermath of recent changes to the federal estate tax.

The Commission heard testimony on the utilization of living wills and other advance directives from a number of witnesses familiar with the use of advance directives in the hospital and hospice settings. While some concerns were raised about the application of particular statutes and the relationships between the various advance directives allowed in Indiana, the witnesses were generally satisfied with the current statutes.

Witnesses urged the Commission to proceed with caution when considering changes to the advance directive laws. The Commission heard that the current statutes are flexible enough to enable people to address many particular circumstances that are not specifically mentioned in the statutes. IC 16-36-4-9 was cited as a particularly important statute because it authorizes a living will declarant to include instructions in the declarant's living will that are not specified in the statutory living will form.

The question arose whether or not the current statutes adequately cover the circumstances under which a living will declaration is effective. The discussion focused on the definition of "terminal condition" found in IC 16-36-4-5. The Commission was again urged to be careful when considering the need to make changes in this area of the law. The Commission heeded this advice and did not make any recommendations regarding this topic.

The Commission discussed the structure of the advance directive laws which allow an individual to prepare a living will, appoint an attorney in fact with health care powers, or name a health care representative. The Commission considered altering this structure in a preliminary draft of legislation (PD 3179). The Commission was told that good drafting, communication, and the flexibility of the current laws mitigate most problems that may arise in the interaction of the various directives. The Commission encouraged the Indiana State Bar Association to study the issue and no further action was taken on the preliminary draft.

The Commission heard testimony on the following preliminary drafts:

PD 3033	Adult adoptions and Class A transferee status
PD 3034	Class B and Class C transferee exemption amounts
PD 3035	Small estates
PD 3042	Uniform Income and Principal Act
PD 3043	Trustee powers
PD 3047	Powers of personal representative
PD 3062	Taking against a will by a subsequent childless spouse
PD 3157	Revising PD 3062
PD 3158	Revising PD 3043
PD 3163	Revising PD 3035
PD 3165	Inheritance tax deduction for expenditures for a memorial to the decedent
PD 3167	Surviving spouse allowance
PD 3179	Consolidating power of attorney for health care and health care representative
PD 3187	Subsequent childless spouse (an alternative to PD 3157)
PD 3192	Advance directives
PD 3217	Living trusts

The preliminary drafts listed above are on file in the Legislative Information Center, Room 230 of the State House, Indianapolis, Indiana. The telephone number of the Legislative Information Center is (317) 232-9856, and the mailing address is 200 West Washington Street Suite 301,

Indianapolis, IN 46204-2789.

## **V. COMMITTEE FINDINGS AND RECOMMENDATIONS**

The Commission recommended that the General Assembly enact legislation based on the following preliminary drafts:

PD 3262 concerning adult adoptions.<sup>1</sup>  
PD 3034 concerning Class B and Class C transferee exemption amounts.  
PD 3042 concerning the Uniform Income and Principal Act.  
PD 3047 concerning the powers of a personal representative.  
PD 3158 concerning trustee powers.  
PD 3264 concerning small estate administrations.<sup>2</sup>  
PD 3265 concerning the inheritance tax deduction for memorials to a decedent.<sup>3</sup>  
PD 3263 concerning subsequent childless spouses.<sup>4</sup>  
PD 3266 concerning living trusts with respect to property taxes and title insurance.<sup>5</sup>

The preliminary drafts recommended by the Commission can be accessed from the General Assembly Homepage at <http://www.ai.org/legislative/>.

The Commission encouraged the Indiana State Bar Association to study the issues addressed by Preliminary Drafts 3179 and 3192 and report the Association's findings to the Commission during the 2006 interim.

The Commission also supports the idea of repealing the Indiana inheritance tax.

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<sup>1</sup>Reflects changes to PD 3033 recommended in the Commission's October 6 meeting.

<sup>2</sup>Reflects changes to PD 3163 recommended in the Commission's October 6 meeting.

<sup>3</sup>Reflects changes to PD 3165 recommended in the Commission's October 6 meeting.

<sup>4</sup>Reflects changes to PD 3187 recommended in the Commission's October 6 meeting.

<sup>5</sup>Reflects changes to PD 3217 recommended in the Commission's October 6 meeting.

## WITNESS LIST

James Cousins, Indiana Bankers Association

Donna Haines, Administrative Director for Palliative Care, Clarian Health Partners

Mary Hill, Director of Ethics Integration, St. Vincent Health

Danielle Hoover, M.D.

Tim Kennedy, Hall Render for the Indiana Hospital and Health Association

Jeff Kolb, Chairman, Probate, Trust, and Real Property Section of the Indiana State Bar Association

Senator Tim Lanane

Heather Macek, Hall Render for the Indiana Hospital and Health Association

Ted Nowacki, Bose, McKinney, & Evans for the Indiana Bankers Association

Mark Scherer, Beebe, Scherer, & Associates for the Indiana Health Care Association

Glenn Tebbe, Indiana Catholic Conference

John VanderZee, Chaplain, Bloomington Hospital